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No. 80-1348

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

STATE OF FLORIDA
DEPARTMENT OF STATE,

Petitioner,

-vs-

TREASURE SALVORS, INC.
ARMADA RESEARCH CORP.,

Respondents.

REPLY BRIEF FOR PETITIONER

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STATE OF FLORIDA
DEPARTMENT OF STATE,

Petitioner,

-vs-

TREASURE SALVORS, INC.
ARMADA RESEARCH CORP.,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

ARGUMENT

I. THE ELEVENTH AMENDMENT BAR TO FEDERAL JURISDICTION IS NOT RESTRICTED TO PROCEEDINGS WHICH MAY AFFECT THE FISC OF THE STATE, BUT IS APPLICABLE IN ANY CASE WHEREIN A STATE IS SUMMONED BY A CITIZEN INVOLUNTARILY INTO FEDERAL COURT.

At the heart of Respondents' argument is their insistence that the eleventh amendment precludes federal jurisdiction only when the relief sought would impact upon the fiscal integrity of the state. Respondents' Brief pp. 14-17. In effect, Respondents argue that the stringent standards for waiver of eleventh amendment immunity have been relaxed since the decision in Edelman v. Jordan, 415 U.S. 651 (1974). This Court has, however, squarely rejected the suggestion that its decision in Edelman has been eroded or should be overruled.

In Florida Department of Health and Rehabilitative Services v. Florida Nursing Home Association, ____ U.S. ____,101 S.Ct. 1032 (March 2, 1981) [hereinafter Florida Nursing Home], the Court rejected a plea to hear argument whether Edelman should be overruled (see concurring opinion of Justice Stevens, 101 S.Ct. at 1034-35), ruling instead:

> The analysis in this case is controlled by our decision in Edelman v. Jordan . . ., [where] we stated that "we will find waiver only where stated 'by the most express language or by such overwhelming implications from the text as [will] leave no room for any other reasonable construction.'"

101 S.Ct. at 1034. The Court in Florida Nursing Home went on to reaffirm its holding in Smith v. Reeves, 178 U.S. 436 (1900), that a state's waiver of sovereign immunity "'does not constitute a waiver by the state of its constitutional

immunity under the eleventh amendment from suit in federal court.'" 101 S.Ct. at 1034.

The test enunciated in Edelman is not, as Respondents suggest, limited to "the fisc of the state." Neither Edelman, Florida Nursing Home, nor any other decision of this Court so states. Petitioner's Brief pp. 26-44. Although the major concern during the ratification process of the eleventh amendment was to protect the treasuries of the states and to overrule Chisholm v. Georgia, 2 U.S. (2 Dall.) 419 (1793), there is nothing in the Amendment itself that limits its application to matters involving the fisc of the state. Jagnandon v. Giles, 538 F.2d 1166, 1172-73 (5th Cir. 1976), cert. denied, 432 U.S. 910 (1977).

Chief Justice Hughes, in a case in

which an ancillary and supplemental complaint had been filed against the State of Missouri[1] to enjoin it from prosecuting a probate matter, offered the following expansive view of the scope of the eleventh amendment:

> The fact that the motive for the adoption of the Eleventh Amendment was to quiet grave apprehensions that were extensively entertained with respect to the prosecution of State debts in the Federal courts cannot be regarded, as respondents seem to argue, as restricting the scope of the

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[1] Treasure Salvors,too, filed a "Supplemental Complaint for Declaratory, Injunctive and Other Relief" on April 17, 1978, R 369-380, after the Fifth Circuit's opinion in Treasure Salvors I was handed down.

> Amendment to suits to obtain money judgments. The terms of the Amendment, notwithstanding the chief motive for its adoption, were not so limited. Expressly applying to suits in equity as well as at law, the Amendment necessarily embraces demands for the enforcement of equitable rights and the prosecution of equitable remedies when these are asserted and prosecuted by an individual against a State. This conception of the Amendment has had abundant illustration. . .(citations omitted)

Missouri v. Fiske, 290 U.S. 18, 27 (1933); see also Louisiana v. Jumel, 107 U.S. 711 (1883). And later, in language very relevant to the case at bar:

> This is not less a suit against the State because the bill is ancillary and supplemental. The State had not been a party to the litigation which resulted in the decree upon which respondents rely. The

> State has not come into the suit for the purpose of litigating the rights asserted. Respondents are attempting to subject the State, without its consent, to the court's process. . . [emphasis supplied]
>
> The fact that a suit in a federal court is in rem, or quasi in rem, furnishes no ground for the issue of process against a non-consenting State. If the State chooses to come into the court as plaintiff, or to intervene, seeking the enforcement of liens or claims, the State may be permitted to do so, and in that event its rights will receive the same consideration as those of other parties in interest. But when the State does not come in and withholds its consent, the court has no authority to issue process against the State to compel it to subject itself to the court's judgment, whatever the nature of the suit.

Id. at 27-28; accord, Knight v. New York, 443 F.2d 415 (2d Cir. 1971) (where plaintiff brought suit against the State of New York for the return of real

property, the Court of Appeals held that the eleventh amendment barred the action since at the time of suit, title had vested in the state and plaintiff's suit therefore would require affirmative action by the state to return the property).

The sole teaching of Edelman is that a waiver of eleventh amendment immunity may be found only where stated "by the most express language or by such overwhelming implications from the text as [will] leave no room for any other reasonable construction", quoting Murray v. Wilson Distilling Co., 213 U.S. 151, 171 (1909).

A state clearly has the prerogative to consent to suit in its own courts without waiving its eleventh amendment immunity from suit in federal court.

Smith v. Reeves, 178 U.S. 436 (1900). Mere legislative consent for a state agency to "be sued" is insufficiant to waive eleventh amendment immunity from suit in federal court. Ford Motor Company v. Department of Treasury of State of Indiana, 323 U.S. 459 (1945); McDonald v. Illinois, 557 F.2d 596 (7th Cir. 1977), cert. denied, 434 U.S. 966; Martin v. University of Louisville, 541 F.2nd 1171 (6th Cir. 1976). As the Fifth Circuit stated in Jagnandan v. Giles, 538 F.2d 1166, 1177 (5th Cir. 1976), cert. denied, 432 U.S. 910 (1977):

> Waiver of a state's constitutional immunity must appear clearly and will not be easily implied. An immunity waived for state suit purposes does not necessarily waive immunity for federal courts.

Respondents' argument that the Court should disregard the eleventh amendment

because "the public interest is better served by Treasure Salvors obtaining possession" (Respondents' Brief pp. 42-48) ignores the teaching of Edelman that the Amendment "'declares a policy and sets forth an explicit limitation on federal judicial power of such compelling force' as to represent a jurisdictional bar which may be raised at any point in the proceedings, even for the first time on appeal." Edelman, supra, at 678, quoting Ford Motor Co. v. Department of Treasury of State of Indiana, 323 U.S. 459, 466-67 (1945). In this case, the State of Florida did not, of course, raise the eleventh amendment bar for the first time on appeal, but raised it at the evidentiary hearing, R.V. III, 63-65, and by way of pre- and post-trial memoranda. R. 422-23; 425-40.

Nothing in Respondents' Brief refutes the plain fact that its eleventh amendment immunity from suit in federal court has been waived by the State of Florida in this case. Furthermore, by virtue of clear and controlling precedent, the federal courts lack jurisdiction to hear the substantive issue presented by Respondents. If this Court is to consider the substantive issue, the eleventh amendment mandates that it can only do so when it receives a petition from a ruling of the appropriate state judicial forum.

II. WHETHER FLORIDA HAS WAIVED ITS ELEVENTH AMENDMENT IMMUNITY IS A QUESTION OF STATE AND NOT FEDERAL LAW.

Respondents argue that, under Fla. Stat. §69.041 (1979), the State of

Florida is claiming a "salvage lien" upon the remains of the Atocha in its possession[2] and that any dispute as to the State's waiver of the eleventh amendment under the statute "is in itself a federal question of which this Court is the ultimate arbiter." Respondents' Brief p. 26. Respondents cite only Petty v. Tennessee-Missouri Bridge Commission, 359 U.S. 275 (1959) as authority for their assertion. The State submits that Petty does not support or imply the proposition. Petty, involving an interstate compact entered into under Congressional approval, holds that any issue as to a state's waiver of eleventh amendment immunity under the compact must necessarily be a question of

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[2]Respondents' Brief pp. 24-26.

federal, and not state, law. 359 U.S. at 278-79.

Absent a Petty-type situation, however, whether or not a state has consented to be sued in the federal courts is a question of state law. Ford Motor Co. v. Department of Treasury of Indiana, 323 U.S. 459, 465-69 (1945); Dagnall v. Gegenheimer, 631 F.2d 1195 (5th Cir. 1980), aff'd on rehearing, 645 F.2d 2,3 (5th Cir. 1981). Dagnall was a negligence action against the Louisiana Department of Highways in which the state sought a favorable verdict and lost before a jury. In a motion for a judgment notwithstanding the verdict, the state argued for the first time that the trial court lacked jurisdiction under the eleventh amendment. "The trial court held that the Department had waived its

eleventh amendment immunity by its pre-trial stipulation that it was amenable to suit and by failing to raise the jurisdictional issue until after trial." 631 F.2d at 1196. On appeal, the Court of Appeals vacated the judgment, saying:

> Because the State of Louisiana is immune from suit in federal court by a citizen of another state, and because Louisiana has not waived this eleventh amendment immunity, the trial court was without jurisdiction and so are we.

Id.

Similarly, in Freimanis v. Sea-Land Service, Inc., 654 F.2d 1155 (5th Cir. 1981), the Court of Appeals held that Louisiana did not waive its eleventh amendment immunity by entering into a consent judgment for damages suffered by plaintiff in a maritime collision. The court said:

> The short answer to [the contention that immunity was waived] is that the attorney for the Department had no clearly expressed authority to waive eleventh amendment immunity. Indeed, Louisiana has clearly expressed its intention to preserve its immunity.

654 F.2d at 1160.

The assertion that questions regarding waiver of the eleventh amendment are to be determined in state tribunals is one whose far-reaching implications were explored in Linkenhoker v. Weinberger, 529 F.2d 51 (4th Cir. 1975), an action wherein the Attorney General of Maryland, in an effort to keep the case alive, represented to the court of appeals that Maryland waived its eleventh amendment immunity. 529 F.2d at 53. Despite the Attorney General's representation, the court was constrained by

Ford Motor Co.'s holding "that a state attorney general could not waive the state's eleventh amendment immunity unless he had been properly authorized by state law to so do." Id. The court held that it had no jurisdiction to consider the claims against Maryland and vacated the judgment of the district court. Id. at 54.

III. THE STATE OF FLORIDA HAS EXERCISED A VALID AND APPROPRIATE POLICE POWER IN ITS EFFORTS TO PRESERVE AND PROTECT ITS MARITIME CULTURAL HERITAGE--A POWER WHICH IS NOT THE SUBJECT OF TRADITIONAL FEDERAL REGULATION.

Respondents, through the procedural smokescreen of bringing an in rem action in admiralty, have attempted to side-step the eleventh amendment's bar to this suit by arguing that, under step two of the Ford Motor Co. test, the State has waived its sovereign immunity by statute and by

participation in an area subject to exclusive federal control. To the contrary, the state-supervised recovery of archeological remains which happen to lie on submerged lands does not require a court of admiralty to exercise jurisdiction when legal disputes arise, any more than does the recovery of archeological remains on dry land. See, e.g., State v. Massachusetts Co., 95 So.2d 902 (Fla. 1956); cert. denied, 355 U.S. 881; State v. Flying "W" Enterprises, Inc., 160 S.E.2d 482 (N.C. 1968); State v. Armistead, 200 S.E. 2d 226 (N.C. App. 1973).

Respondents suggest that the State has claimed a "salvage lien" and has thus waived sovereign immunity under Fla. Stat. §69.041 (1)(b)(1979). The State of Florida has not claimed a lien on the

artifacts; it has claimed ownership--through fully executed contracts. JA 44. Furthermore, Respondents' back-door entry into admiralty court, through the use of salvage lien principles, is unprecedented and unnecessary, in terms of disputes over the ownership of marine artifacts.

Respondents' waiver argument is predicated upon a fallacy: that the State's claim to the artifacts is in effect a lien for salvage and, concomitantly, that an admiralty court is the only forum in which a salvage lien contest can be heard. "However, the class of legal situations in which maritime liens arise has long since been determined, and new types of liens may not arise by analogy or by judicial fiat." Vazman, S.A. v. Fidelity International Bank, 418 F.Supp. 1084,

1086 n. 5 (S.D. N.Y. 1976).

> An Admiralty Court cannot create a maritime lien. The Lottawanna, 21 Wall. 558, 88 U.S. 558, 22 L.Ed. 654. Maritime liens are stricti juris and cannot be extended argumentatively or by analogy or inference.

United States v. Oil Screws Ken. Jr., etc., 275 F.Supp. 792, 796 (E.D. La. 1967).

> [T]his [maritime] privilege or lien, though adhering to the vessel, is a secret one; it may operate to the prejudice of general creditors and purchasers without notice; it is therefore "stricti juris," and cannot be extended by construction, analogy or inference.

Osaka Shosen Kaisha v. Pacific Export Lumber Co., 260 U.S. 490, 497 (1922).

> [A]dmiralty law has long ago ceased to create new liens. The only liens recognized today are those created by statute and those historically recognized in maritime law.

In Re: Admiralty Lines, Ltd., 280 F. Supp. 601, 604-05 (E.D. La. 1968), aff'd, 410 F.2d 398 (5th Cir. 1969). See also European-American Banking Corp. v. M/S Rosaria, 486 F.Supp. 245 (S.D. Miss. 1980); Fathom Edpeditions, Inc. v. M/T Gavrion, 402 F.Supp. 390 (M.D. Fla. 1975).

Furthermore, Chapter 267, Florida Statutes, which serves to preserve and protect marine antiquities of cultural or historical value, promotes an interest unprotected by traditional admiralty law. The maritime law of salvage constitutes a reasonable system where speed and efficiency are required to recover property or preserve human life which is in immediate maritime peril. But salvage law's traditional emphasis on prompt action is entirely unsuited to the

promotion of cautious, painstaking, archeological recovery of artifacts and other items lost or abandoned at sea. "The business of searching for and recovery from the bottom of the sea, treasure and artifacts lost centuries ago is not the business of saving property shipwrecked and in distress. . ." In re: Andrews, 266 F.Supp. 162, 164 (M.D. Fla. 1967). Consequently, traditional salvage law fails to provide for the specialized problems of marine archeology. Salvage's fundamental emphasis on speed of action is utterly antithetical to the general needs of archeology and history, and the specific requirements for the preservation of the immeasurable cultural heritage found in the wreck-sites along the Florida coast.

Moreover, admiralty courts traditionally have limited the application of salvage concepts to the recovery of actual vessels and cargoes located on actual vessels. Admiralty courts consistently have declined to exercise jurisdiction over the recovery of property other than vessels able to engage in navigation. Apparently, admiralty courts have exercised extreme caution in extending admiralty's emphasis on speed of action to marine recoveries not necessitating prompt activity.

The classic statement of this limiting doctrine appears in The Hendrik Hudson, 11 Fed.Cas., 1085, No. 6.355 (S.D. N.Y. 1869). The case involved an alleged in rem action, based on salvage principles, against a dismantled, non-motive hulk, which was intended to become

a hotel. The hulk sank in the Hudson River while being towed to a new location. A passing vessel raised the hulk by pumping out enough water to allow it to float to the surface. The salving vessel then sought a maritime lien against the hulk to guarantee payment for the salvage services. The Court stated:

> Although this hulk or structure had been a vessel, in the full sense of the term, and subject to the admiralty and maritime jurisdiction of. . . the United States, and although its form and shape under water continued to be those of a vessel, yet I think that, in the actual circumstances of its physical existence, this court was and is without jurisdiction over it in rem, in respect of the claim sued on in this suit. This hulk was not, in any proper sense, engaged in commerce or navigation. A floating house of religious worship, or a floating swimming bath, or a floating residence, could be

> towed, and, in such sense, navigated, but such a structure could not be engaged in navigation, in such a sense as to be liable in rem, in the admiralty, for a service like the present one. The fact that the structure was the shape of a vessel, or had been once used as a vessel, or could, by proper appliances, be again used as such, cannot affect the question. The test is, the actual status of the structure, as being fairly engaged in commerce or navigation. . .

Id. at 1086. Accord, Hayford v. Dousony, 32 F.2d 605 (5th Cir. 1929) (floating barge used for dancing pavilion held not subject to maritime lien); The Jefferson, 158 F. 358 (E.D. Va. 1908) (salvage law inapplicable to steamship in dry dock); Cope v. Vallette Dry Dock, 16 F. 924 (E.D. La. 1883) (dry dock moored to bank for 14 years not subject to salvage law principles).

In the instant case, no "vessel" exists. The wooden frame of the Atocha disintegrated long ago, and the wreck-site today consists only of coral-encrusted metal pieces and remains of the actual vessel which are scattered below the ocean floor. An admiralty court applying the established rule of The Hendrik Hudson simply should not assert jurisdiction over such a res, and consequently, a state court is the proper forum to hear any disputes over ownership of that res.

Section 267, Florida Statutes recognizes the manifest inapplicability of traditional salvage concepts to the recovery of artifacts from Florida's

wreck-sites,[3] and is entirely consistent with the line of cases, out of both this Court and various Circuit Courts of Appeal which have held that the goal of preserving structures and areas of particularly historic, cultural, or archeological significance is an entirely proper subject of a state's exercise of its police power. See Petitioner's Brief pp. 66-71.

Section 267 in fact constitutes a carefully planned program designed to emphasize the preservation of wreck-sites and their artifacts through state-controlled, state-of-the-art archeological efforts. The statute represents

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[3] An invaluable discussion of the public benefit provided by skilled archeologists operating under Section 267 appears in R. Burgess & C. Clausen, Gold, Galleons & Archeology ch. 15, at 141-150 (1976).

the combined efforts of lawyers, legislators, historians, and marine archeologists, all vitally concerned with the preservation of Florida's uniquely fascinating heritage.

Regulations promulgated under the authority of §267.061 indicate the practical effect of the section. The regulations authorize the State Division of Archives to enter into contracts for exploration and salvage operations conducted on state-owned submerged lands. Fla. Ad. Code ch. 1A-31.01(1). The Division, however, may only enter into salvage and exploration contracts after determining the ability of the party seeking the contract to explore or salvage in a competent, professional manner. Id., ch. 1A-31.03(2). The

Division also must strictly limit the use of prop-wash excavating devices,[4] and must approve the use of any other means of exploration or salvage on a given site.[5] Id., ch. 1A. 31.03(3). Most importantly, the Division must retain

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[4] A prop-wash, or "sand-blaster" device, directs a violent jet of air from a ship's propeller to the ocean floor below. The enormous blast of air will dig a huge hole in a matter of minutes.

[5] Any gold or silver artifacts caught in the blast will sink to the bottom of the hole for easy recovery by divers; glass, porcelain, and intricate metal-work will be blown to pieces.

> On its first trial the blaster exceeded all expectations . . . it sounded like sixteen jet fighters roaring off the runway at the same time it blew and off the bottom of the Wabasso harbor for two hundred feet or more it blasted not only modest holes but elephantine pits.

Burgess & Clausen, supra note 2, at 129.

complete supervisory control over the exploration or salvage operation, and at least one agent of the Division must be at the site at all times, to ensure that the operation is conducted in an archeologically responsible manner and to catalog recovered items. Id., ch. 31.10.

The regulations, however, do not benefit the State and its cultural heritage to the exclusion of the private salvor. The regulations benefit salvors in several ways. First, the regulations substantially increase the value of a find, since State supervision and cataloging ensures authenticity and thereby attracts [6] investors. Thus,

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[6] The "salting" of wreck-sites and the production of counterfeit artifacts is a very real and severe problem. See Burgess & Clausen, supra note 2, at 133-37.

although the State generally retains 25% of recovered items and artifacts, relinquishing the remaining 75% to the successful salvor, the State authentication process may nearly double the value of the 75% which goes to the salvor. Additionally, the State's archeologist commonly provides professional advise and experience to the private salvor. The State also provides sophisticated equipment for immediate processing of recovered artifacts, which is necessary because recovered marine artifacts begin a rapid deterioration process in the open air. Lastly, the State Marine Patrol keeps all other parties off of the wreck-site being worked under State lease. Thus, the State program removes

the threat of claim-jumping by rival salvors.[7]

Without the State's salvage contract program, salvagers would be in the position of warring for shipwreck sites, seeking to oust each other from promising areas. Furthermore, few, if any, salvage companies have the sophisticated laboratory facilities and equipment which the State has, or the State's technical and professional personnel--archaeologists, chemists, metallurgists, photographers,

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[7] Attempted site-jumping involving gun-fire and threatened violence reportedly has occured at wreck-sites beyond the State's jurisdiction. See Treasure Salvors, Inc. v. Unidentified, Wrecked etc. (Treasure Salvors III), 640 F.2d 560, 564 (5th Cir. 1981).

illustrators, and historians--whose expertise is necessary for the preservation and analysis of recovered artifacts.

The danger to recovered artifacts which have not been processed through the State's laboratory is illustrated by the deterioration of cannons and other objects which have been taken from wreck-sites by unauthorized salvors. Cannons recovered by authorized salvors are stored immediately in conditions approved by the State Marine Archeologist. They are then subjected to up to fourteen months of stabilization and processing in the State laboratory, and finally, are coated with high-density paint. The cannons' forms and markings will remain fully preserved after such special treatment and procedures.

In contrast, unprocessed cannons begin an immediate deterioration process, and eventually collapse in on themselves. The deterioration process is irreversible. Once a careless or callous salvor has recovered a cannon and exposed it to the air, deterioration commences, and the beauty and value of the cannon is lost forever. Precisely the same process occurs with other iron weapons, eating utensils, sextants, and wooden block-eyes and other wooden objects. Glass and porcelain artifacts, of course, do not deteriorate in the same fashion as iron and wooden artifacts. Nevertheless, any salvor choosing to blast and excavate with a prop-wash device can destroy glass and porcelain equally as effectively, and even more quickly, than deterioration can destroy unprocessed cannons.

Should the Court hold that this case was properly brought in admiralty court (Chapter 267 notwithstanding) and that the eleventh amendment does not bar the suit, then the State's ability to operate a plan which protects both the interest of the people in preserving their cultural heritage and the interest of individual salvage companies in receiving just compensation for their salvage efforts will be effectively abrogated.

None of the benefits of the State leasing program are derived from, related to, or available under strict admiralty law. Traditional admiralty rules provide no incentive to salvage in a controlled and archeologically responsible manner. To the contrary, traditional admiralty rules encourage salvors to act rapidly and with brutal efficiency. Moreover,

admiralty judges are not archeological experts, and could not independently determine the most responsible excavating process for a given site. Nor could an admiralty court provide independent authentication and prompt, scientific processing of recovered artifacts.

Thus, section 267 and the regulations promulgated thereunder function in an area which appears to be "maritime" at first glance, but is actually alien to admiralty law. Section 267, far from operating in derogation of admiralty law, operates in an area unknown to traditional admiralty law. Accordingly, the State's claim of ownership of these artifacts is not in the form of a lien and the waiver of immunity from suit in federal court via Fla. Stat. §69.041(1)(b)is wholly inapplicable to the present fact

situation--especially in light of the admonition in Edelman v. Jordan, 415 U.S. at 673 (that statutes which purport to waive sovereign immunity must be construed strictly) and Manatee County v. Town of Longboat Key, 265 So.2d 143 (Fla. 1978) (that the State Constitution mandates that unambiguous statutory language must be used in order to effect a waiver of sovereign immunity). See also Kirk v. Kennedy, 231 So.2d 246 (Fla. App. 1970).

Respondents' contention that Florida has waived its eleventh amendment immunity by participation in an area of traditional federal regulation is similarly ill-considered. The flaw in Respondents' argument is that it is mis-focused: it is not traditional, commercial, maritime salvage in which the

State and Treasure Salvors participated under contract, but instead, the archeological recovery of submerged artifacts. As stated earlier, there is not even the semblance of a vessel buried beneath the sand in this case; what does exist are the scattered remains of a ship and its cargo--or that which has not deteriorated or rusted away during the course of 350 years. There has been no showing that the federal government has a recognizable interest in the archeological protection and recovery of marine artifacts; certainly, it has not statutorily done so, to date. See Treasure Salvors I, 569 F.2d 330, 337-41 (5th Cir. 1978). Indeed, the State of Florida, Department of State would welcome appropriate federal protection of historical shipwrecks, but none has been forthcoming. But see H.R. 132, referred

January 5, 1981 to House Committee on Interior and Insular Affairs and House Committee on Merchant Marine and Fisheries.

CONCLUSION

The Respondents would have this Court restrict the eleventh amendment's application to suits wherein the fiscal integrity of a state may be affected. The Amendment contains no such limitation nor has this Court ever interpreted the Amendment to be so limited. As soon as the trial court below issued its warrant for arrest in rem of subject matter in the possession of the state government, it exceeded its jurisdiction by making the State of Florida an involuntary party to an action which was in essence a contract dispute between it and one of its citizens.

The fact that the property had once lain buried on the bottom of the ocean and not on dry land does not permit a court of admiralty to apply salvage principles in derogation of state laws protecting such antiquities and to undermine the clear message of the eleventh amendment.

Respectfully submitted,

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